

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 365

November 10, 1999, 5:51 p.m.
Page S-14502 Temp. Record

BANKRUPTCY REFORM/More Income Exclusions

SUBJECT: Bankruptcy Reform Act of 1999 . . . S. 625. Dodd modified amendment No. 2532.

ACTION: AMENDMENT REJECTED, 45-51

SYNOPSIS: As reported, S. 625, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, will enact reforms to protect consumers from unfair credit practices, and will enact business bankruptcy reforms. The bill is similar to the bipartisan bill considered last session (see 105th Congress, 2nd session, vote No. 313).

The Dodd modified amendment would make four changes. First, it would amend the means test that will be used by the bill to determine whether debtors who have the ability to repay part of their debt may have their cases dismissed or moved from Chapter 7 bankruptcy to Chapter 13 bankruptcy. (In Chapter 7, the debtor surrenders those assets which do not qualify for an exemption under the law, and the assets are sold to satisfy (in part) the demands of the creditors. Any remaining debt is "discharged" (erased). In Chapter 13, on the other hand, a repayment plan is created under which a debtor repays a portion of his or her debt out of his or her future earnings. Upon the completion of the repayment plan any remaining debt is discharged. Under this bill, if a debtor files for Chapter 7 bankruptcy and, based on his or her current income, can repay the lesser of at least 25 percent of his or her general unsecured debts or \$15,000, then the bankruptcy court will "presume abuse" of Chapter 7 exists. In determining a debtor's ability to repay and in setting up a repayment plan, a bankruptcy court will use the standards used by the Internal Revenue Service (IRS) when it determines how much it will take per month in back taxes from a delinquent taxpayer and how much it will allow that taxpayer to keep for living expenses. According to the General Accounting Office (GAO) and the IRS, the IRS standards permit any necessary expenses, disallowing only "unnecessary and unreasonable" expenses). Instead of using the IRS standards, the Dodd amendment would list certain allowable expenses. Second, it would define "household goods" as being tangible personal property normally found in or around a residence, excluding motor vehicles. Third, it would exempt any support payments or other payments for children from being considered as income when determining a debtor's ability to repay. Fourth, it would amend the section on nondischargeability of certain debt occurred shortly before declaring bankruptcy. (Under current law, items purchased within 60

(See other side)

YEAS (45)			NAYS (51)			NOT VOTING (3)	
Republicans (3 or 6%)	Democrats (42 or 95%)		Republicans (49 or 94%)	Democrats (2 or 5%)		Republicans (2)	Democrats (1)
Brownback	Akaka	Kennedy	Abraham	Helms	Biden	McCain ⁻²	Boxer ⁻²
Jeffords	Baucus	Kerrey	Allard	Hutchinson	Robb	Santorum ⁻²	
Voinovich	Bayh	Kerry	Ashcroft	Hutchison			
	Bingaman	Kohl	Bennett	Inhofe			
	Breaux	Landrieu	Bond	Kyl			
	Bryan	Lautenberg	Bunning	Lott			
	Byrd	Leahy	Burns	Lugar			
	Cleland	Levin	Campbell	Mack			
	Conrad	Lieberman	Chafee, Lincoln	McConnell			
	Daschle	Lincoln	Cochran	Murkowski			
	Dodd	Mikulski	Collins	Nickles			
	Dorgan	Moynihan	Coverdell	Roberts			
	Durbin	Murray	Craig	Roth			
	Edwards	Reed	Crapo	Sessions			
	Feingold	Reid	DeWine	Shelby			
	Feinstein	Rockefeller	Domenici	Smith, Bob			
	Graham	Sarbanes	Enzi	Smith, Gordon			
	Harkin	Schumer	Frist	Snowe			
	Hollings	Torricelli	Gorton	Specter			
	Inouye	Wellstone	Gramm	Stevens			
	Johnson	Wyden	Grams	Thomas			
			Grassley	Thompson			
			Gregg	Thurmond			
			Hagel	Warner			
			Hatch				

VOTING PRESENT (1)

Fitzgerald

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

days of bankruptcy from a single creditor in excess of \$1,075 are not dischargeable. The bill will make luxury items worth more than \$250 nondischargeable if they are purchased on a credit card within 90 days of declaring bankruptcy, and will make cash advances on credit cards made within 70 days of declaring bankruptcy nondischargeable. Debts over these limits would still be dischargeable if a debtor demonstrated to the bankruptcy court that they were for necessary expenses.) The Dodd amendment would strike the bill provisions regarding nondischargeable debt incurred shortly before declaring bankruptcy and in lieu thereof would provide that no single debt for an item or service worth more than \$400 would be dischargeable if it was incurred within 60 days of declaring bankruptcy.

Those favoring the amendment contended:

The Dodd amendment would correct several overly punitive parts of this bill. First, it would make sure that people will not be forced into repayment plans that did not give them enough money to live on. We do not believe that the bill's reliance on the IRS standards for repayment plans is fair because those standards do not specifically list such allowable living expenses as child support or union dues payments. Also, they allow greater expenses for necessities for higher-income people than for lower-income people. Second, the amendment would change the definitions of household goods to make sure that creditors do not go into homes and take such items as VCRs and toys that have little resale value but have great personal value. Third, it would make certain that child support payments and other payments that are for children do not get counted as part of a bankrupt's income that may be divvied up among creditors. Fourth, and finally, it would strike the bill's unduly harsh sections on nondischargeable credit card debt and would put in much more reasonable provisions. Under this bill, if a mother ran up a \$251 credit charge at K-Mart buying clothes for her kids, and 80 days later had to declare bankruptcy, that debt would count as a "luxury" purchase that she could not erase. We think that is extreme. Under the Dodd amendment, only individual items that cost more than \$400 and that were purchased within 70 days of declaring bankruptcy would be considered luxury items that could not be discharged. We think that the Dodd amendment would correct several of the excesses of this bill. We urge our colleagues to support it.

Those opposing the amendment contended:

We oppose each part of this amendment. First, it would allow any item in a home, however valuable (such as a \$2,000 stereo system), to be counted as a "household good" that a debtor could keep while at the same time escaping legitimate debts. (While we oppose this part of the amendment, some of us agree with the intent of protecting items of personal value but little monetary value, and will work with our colleagues on finding acceptable language). Second, this amendment would reject using IRS standards for determining a debtor's ability to repay a portion of his or her debts and the amount that should be paid. The IRS standards, which are in place and working, are used to collect back taxes that are due from taxpayers. In lieu of the IRS standards, the Dodd amendment would adopt new standards that we do not think are in any way more expansive but are certainly less tested and less defined. The IRS standards only disallow unreasonable and unnecessary expenses, which we think is more than sufficient. As for the particular concern that the IRS allows higher-income taxpayers to have higher allowable expenses, we note that under this bill we are not going to see many lower-income people in Chapter 13 repayment plans, because creditors will not have any right to try to force Chapter 7 filers, whose debts are erased, into Chapter 13 if their incomes are under the lower of the national median income (\$49,000) or the applicable State median income. Third, this amendment would help richer bankrupts with high incomes avoid paying their creditors by ignoring their child support income. For instance, a bankrupt with \$100,000 in income who received \$25,000 per year in child support income and who had mortgage, car, and household expenses equaling \$100,000 could get away with filing under Chapter 7 and walk away with \$25,000 per year. To make up for their losses from such bankrupt filers who would avoid repaying their debts, creditors would then increase the cost of borrowing for hardworking families, including lower-income families, that repaid their debts. Fourth, this amendment would strike the very reasonable restrictions in this bill that will stop dishonest people from running up frivolous debts right before they declare bankruptcy. Under this bill, it would still be possible to get a cash advance of \$749 on a credit card in order to pay off a non-dischargeable debt right before declaring bankruptcy, and then to have that \$749 credit debt erased in bankruptcy, and it would still be possible to buy \$249-worth of caviar the day before declaring bankruptcy and then have that debt written off without question. Further, it would even still be possible to run up much larger charges right before declaring bankruptcy if they were for necessary expenses that a creditor could justify to a bankruptcy judge. Supporters of the Dodd amendment think that these limits are too tough. They do not want any purchase questioned right before someone declares bankruptcy unless it is for an item worth more than \$400. Considering that businesses have to raise their prices to recoup losses from people who declare bankruptcy, and considering that the average American family pays \$400 more per year because of those higher prices, we simply disagree with our colleagues. In sum, the Dodd amendment would weaken this bill in four areas. It would allow people to escape paying debts that they have the ability to repay, and other Americans would end up footing the bill. We oppose that result and thus oppose this amendment.